IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINETEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 23862 of 2003

Between:

1 Ambati Venkata Basava Raju, S/o Subba Rao,
Venkatapuram, Mopidevi Mandal,
Krishna District.
2 Movva Satyanarayanamma, W/o. not known
Venkatapuram, Mopidevi Mandal,
Krishna District.
3 Ambati Veerarjuna Rao, S/o Subba Rao,
Venkatapuram, Mopidevi Mandal,
Krishna District.
4 Ambati Kamala Kumari, D/o. Subba Rao,
Venkatapuram, Mopidevi Mandal,
Krishna District.
5 Ambati Basava Sankara Rao, S/o. Subba Rao,
Venkatapuram, Mopidevi Mandal,
Krishna District.
6 Ambati Sreenivasa Rao, S/o. Subba Rao,
Venkatapuram, Mopidevi Mandal,
Krishna District.

..... PETITIONERS

AND

1 Government of Andhra Pradesh, Represented by Secretary,
Land Acquisition, Secretariat, Hyderabad.
2 The District Collector, Krishna, Machilipatnam.
3 The Revenue Divisional Officer, (Land Acquisition Officer),
Bandar Chilakalupudi, Machilipatnam,
Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of MANDAMUS, declaring the notification under section 4(1) and section 6 of

the Land Acquisition Act published by the Government for acquisition of the lands belonging to the petitioners in R.S.No.34/1, 34/2, 34/3, and 34/4 of Venkatapuram Village, Mopidevi Mandal, Krishna District, as arbitrary, illegal, capricious, malafide and contrary to Mandatory provisions of Land Acquisition Act and also violative of Article 300-A of the constitution of India.

Counsel for the Petitioners : MR. T.S.ANAND

Counsel for the Respondents 1 to 3 : GP FOR LAND ACQUISITION

The Court made the following :

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THE HON'BLE MS. JUSTICE G. ROHINI

W.P.No.23862 of 2003

ORDER:

The petitioners, six in number filed this writ petition seeking a declaration that the proceedings initiated under the Land Acquisition Act, 1894 for acquisition of the lands belonging to the petitioners situated in R.S.No.34/1, 34/2, 34/3 and 34/4 of Venkatapuram Village, Mopidevi Mandal, Krishna District, are arbitrary and illegal.

The petitioners claim that they have purchased the land in question from one Smt. Chelasani Krishnakumari under registered sale deeds dated 22-12-1992. It is stated that initially the said lands were acquired for providing house sites to weaker sections vide Notification, dated 5-5-1993, published under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act"]. In pursuance thereof, the Revenue Divisional Officer, Bandar issued a notice under Section 5-A of the Act calling for objections from all the persons interested. The petitioners submitted their objections stating that the land in question is the only source of their livelihood and since alternative lands are available for the purpose of providing house sites to weaker sections, the proposed acquisition is not justified. Notwithstanding their objections the District Collector, Krishna, issued the declaration under Section 6 of the Act, which was published in the local daily on 15-11-1993. Aggrieved by the same the petitioners filed W.P.No.18032 of 1993. Though the said writ petition was dismissed by order dated 19th July, 2001, this Court observed that it is open for the Government to withdraw the

Land Acquisition Proceedings in accordance with law if they feel that the need does not survive any further. Thereafter, the Land Acquisition Officer visited the village in question and having found that the said lands being low lying and far away from the village are not suitable for providing house sites to the poor, instructed his subordinates to select a suitable alternative land nearer to the village. In pursuance thereof, no further steps were taken and the acquisition proceedings were dropped. It is alleged that thereafter at the instance of the rival groups in the village, the 3rd respondent submitted fresh proposals for acquisition of the land of the petitioners for the same purpose of providing house sites to the weaker sections and consequently a notification under Section 4(1) of the Act was published in the local dailies on 24-10-2003 and 27-10-2003 under which the enquiry under Section 5-A of the Act has been dispensed with. The declaration under Section 6 was also published in the local dailies on
24-10-2003 and 28-10-2003.

The said action of the respondents is under challenge in this writ petition contending *inter alia* that the simultaneous publication of the notification under Section 4(1) and the declaration under Section 6 of the Act is contrary to the mandatory provisions of the Act and therefore on that ground alone the proceedings are liable to be set aside. It is also contended that since the lands in question were earlier found to be not suitable and the proceedings were dropped, the respondents are not justified in issuing a fresh notification in respect of the same lands. It is also contended that most of the beneficiaries were already granted house site pattas and they have sold away the lands to third parties and therefore fresh acquisition under the Land Acquisition is unwarranted.

On behalf of the respondents the Revenue Divisional Officer, Bandar, filed a counter affidavit stating that the proceedings under the earlier notification stood lapsed due to efflux of time prescribed under the Act for passing the award. However, on a request made by the villagers and with the consensus of the Gram Sabha the Mandal Revenue Officer, Mopidevi submitted proposals for

acquisition of the same land to an extent of Ac.3-66 cents. Accordingly, the draft notification under Section 4(1) of the Act was published duly invoking the urgency clause. Thereafter the draft declaration under Section 6 of the Act was also published as the Government launched crash programme to complete the distribution of house site pattas to weaker sections before

31st March, 2004. It is also pleaded that the notification under Section 4(1) and the declaration under Section 6 of the Act were published in accordance with the statutory provisions and that the acquisition is in public interest. The allegation of the petitioners that alternative lands are available and that the land in question is not suitable for providing house sites has been denied.

I have heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for the respondents and perused the material on record.

Admittedly the notification under Section 4(1) of the Act which was published in the Gazette dated 17-10-2003 was published in the local dailies on 24-10-2003 and

27-10-2003. As per the provisions of sub Section (1) of Section 4 of the Act the last of the dates of such publication shall be referred to as the date of publication of the notification. Thus, the date of Section 4(1) notification shall be taken as 27-10-2003. In the counter-affidavit, it is admitted that the declaration under Section 6 of the Act was published in the Gazette dated 20-10-2003, and it was published in the local dailies on 24-10-2003 and 28-10-2003.

In STATE OF U.P. v. RADHEY SHYAM, the Supreme Court having considered the effect of the amendments brought out under the Land Acquisition (Amendment) Act 68 of 1984 held that after the amendment, the notification under Section 4(1) of the Act and the declaration under Section 6 of the Act cannot be published simultaneously. It was explained that the words "*after the date of publication of the notification*" in sub-section (4) of Section 17 read simpliciter clearly indicate that declaration under Section 6 had to be made after the publication of the notification meaning thereby subsequent to the date

of the publication of the notification.

In the case on hand, as noted above, the date of the notification under Section 4(1) of the Act shall be taken as 27-10-2003. Hence, the respondents are expected to publish the declaration under Section 6 of the Act only after 27-10-2003. Since admittedly the declaration under Section 6 was published in the Gazette on 20-10-2003 i.e, much prior to 27-10-2003, I am of the view that the same is bad in law. Even if the last date of the publication of the declaration under Section 6 is taken into consideration, it would be 28-10-2003 i.e., one day after the last date of publication of Section 4(1) Notification and it is nothing but simultaneous publication of both Section 4(1) notification and Section 6 declaration. Thus, even on that ground, it is not in conformity with the statutory requirement as explained by the Supreme Court in RADHEY SHYAM's case (1 supra).

Viewed from any angle, I am of the view that Section 6 declaration cannot be sustained and it is accordingly set aside.

It is also relevant to note that in the counter-affidavit, the Revenue Divisional Officer has admitted the fact that on 31-01-2003 the then Land Acquisition Officer and Revenue Divisional Officer, Bandar inspected the lands proposed for acquisition and having found that the proposed land is situated at a distance of 1KM from the village and low lying and particularly the drainage is passing through all the three sides of the land, instructed the Mandal Revenue Officer, Mopidevi to select the alternative land for acquisition for providing house sites in Venkatapuram Village. If that be so, *prima facie* it appears that the acquisition of the very same land under the impugned notification is unwarranted. At any rate, since the enquiry under Section 5-A of the Act was dispensed with under the impugned notification, the petitioners were denied an opportunity to raise their objections and the fact remains that the land has been acquired without conducting any enquiry as contemplated under Section 5-A of the Act. The only explanation offered by the respondents in the counter-affidavit for dispensing with the enquiry is that the Government has launched crash programme to complete the distribution of house site pattas to the weaker

sections before 31-03-2004. Be that as it may, by virtue of the interim orders granted by this Court, dated 13-11-2003, further proceedings in pursuance of the impugned notification including dispossession of the petitioners have been stayed and the pattas to the weaker sections have not been distributed so far.

Having regard to the facts and circumstances of the case and particularly keeping in view the objection raised by the petitioners as to the suitability of the land in question for providing house sites to the weaker sections and also the plea as to the availability of the alternative land, I am of the view that it would be appropriate to conduct an enquiry under Section 5-A of the Act before taking any further proceedings.

Accordingly, the impugned declaration under Section 6 of the Act dated 20-10-2003 is set aside. Further, the impugned notification under Section 4(1) of the Act dated 17-10-2003, to the extent of invoking the urgency clause under Section 17(4) of the Act, is quashed and the Writ Petition is disposed of with a direction to the respondents to conduct the enquiry under Section 5-A of the Act after issuing due notice to the petitioners and other persons concerned and to take appropriate further proceedings in accordance with law.

The Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J

Dated:19-01-2005.

LSK

To

1. The Secretary, Government of Andhra Pradesh, Land Acquisition, Secretariat, Hyderabad.

2 The District Collector, Krishna, Machilipatnam.
3 The Revenue Divisional Officer, (Land Acquisition Officer),
Bandar Chilakalupudi, Machilipatnam,
Krishna District.

4.2CCs to G.P. for Land Acquisition, High Court of AP Bldgs, Hyderabad (OUT).

5.2CD copies